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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,915	10/16/2003	Roger N. Chauza	CHAU-0101US	7480
31782	7590	11/28/2007	EXAMINER	
Handley Law Firm, PLLC Roger N. Chauza, PC PO BOX 140036 IRVING, TX 75014			MCMAHON, MARGUERITE J	
			ART UNIT	PAPER NUMBER
			3747	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/686,915

Applicant(s)

CHAUZA ET AL.

Examiner

Marguerite J. McMahon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-15 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-15 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 2-3 of claim 24 "simultaneously display an engine performance parameter resulting from the aftermarket apparatus switched in and out of operation" is unclear. In lines 2-3 of claim 25 "programmed to calculate and display a difference between said engine performance parameters" is unclear.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7, 13-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (6,596,163) in view of Saito et al (5,159,915). Parker shows an engine performance demonstration unit comprising a mobile carrier (i.e. a vehicle), an engine mounted to the mobile carrier, an aftermarket apparatus 10 for use with the engine to modify the properties of fuel to be combusted by the engine and thereby affect the operation of the engine, said aftermarket device comprising several magnets 15, 20, each magnet being held in a metal frame or housing. Saito teaches that it is old in the art to employ a switch for switching an aftermarket apparatus 4 into operation and out of

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operation while said engine is running based on monitored engine conditions to thereby affect the engine accordingly (see last line of column 2 and beginning of column 3).

It would have been obvious to one having ordinary skill in the art to modify Parker by substituting electromagnets for permanent magnets, since the two are art-recognized equivalents, and by providing a switch which allows the aftermarket apparatus (i.e. the magnetizing apparatus 10) to be switched into and out of operation while the engine is running, in order to provide flexibility of operation of the aftermarket device.

With respect to claim 13, it would have been obvious to one having ordinary skill in the art to employ a catalytic converter which is capable of being switched into and out of operation with respect to the engine exhaust gases, since it is conventional in the engine art to provide a catalytic converter, and it would be inherent that it would be capable of being switched into and out of operation.

With respect to claim 14, it would be inherent that the engine would have a load, in order to usefully function, and that the load would be switched into and out of operation, said load inherently providing a resistance to a torque produced by the engine.

Finally, with respect to claim 21, it would have been obvious to one having ordinary skill in the art to provide a programmed processor for controlling said switch mechanism for switching said aftermarket apparatus into and out of operation, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Claims 2-5, and 22-27, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (6,596,163) in view of Saito et al (5,159,915) as applied to claims 1, 6-15 and 21 above, and further in view of Yukihiro (JP)2001341552A). Parker in view of Saito et al show everything except utilizing a visual display for showing the difference in operation of the aftermarket apparatus when operational and nonoperational, the visual display comprising two visual displays, said visual display displaying a parameter related to a pollutant emitted by said engine.

Yukihiro teaches that it is old in the art to employ a visual display which is capable of showing the difference in operation of the engine when the aftermarket apparatus is operational and nonoperational, the visual display showing a parameter related to a pollutant emitted by the engine, and a programmed processor to control the switch mechanism (see abstract). It would have been obvious to one having ordinary skill in the art to modify Parker in view of Saito et al by employing a visual display which is capable of showing the difference in operation of the engine when the aftermarket apparatus is operational and nonoperational, in order to provide useful information to the vehicle operator about the performance of the engine.

With respect to claim 3, it would have been obvious to provide an additional visual display, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claim 4, it would have been obvious to one having ordinary skill in the art to provide a fuel flow gauge as part of the display, in order to inform the vehicle

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operator as to the level of fuel contained in the fuel tank, as this is conventional in most vehicles.

Furthermore, the recitation in claim 22 fails to add a patentable distinction, since the only additional limitation that it provides is to provide a *programmed processor*, which would carry out the process already shown in the prior art. Again, as noted above with respect to claim 21, it would have been obvious to one having ordinary skill in the art to provide a programmed processor to carry out the process shown by the prior art, since it is well known and conventional to computerize engine operations

With respect to claim 23, it would have been obvious to one having ordinary skill in the art to store additional engine performance parameters in the processor and to provide a visual display of these parameters, such as the odometer and other conventional control panel displays utilized in most modern vehicles.

Allowable Subject Matter

Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant requests that the examiner respond to Applicant's response to the Restriction requirement. The restriction requirement was dropped and all the claims were examined.

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Applicant further requests that the examiner provide additional references concerning NASCAR trailers. In a conversation with the examiner's supervisor, the supervisor indicated his opinion that the claims would read on NASCAR trailers. The examiner, in a telephone conversation with Applicant, referred to this discussion in an attempt to convince Applicant to more precisely claim his invention. As the examiner determined that the best rejection was shown by the art indicated in the rejection, and the NASCAR trailer search did not yield relevant prior art, the examiner is not required to provide the results of this search.

Applicant asserts that the rejection is unclear as he is not sure whether the examiner is referring to the aftermarket apparatus of Parker or Saito et al. The rejection has been modified to indicate that the aftermarket apparatus of Parker is being referenced.

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Applicant lists several definitions of the work "aftermarket" including the market for replacement parts or accessories for a produce or any part or component that is bought or sold that is not original equipment included when the car was produced brand new. The examiner also wishes to make of record that aftermarket may also include optional equipment, not factory installed, that is sold and installed by the dealer or an outside reseller. It is also an umbrella term for the collective network of vendors who design and sell vehicular components that are intended to replace the stock manufacturer's parts. As such, an aftermarket apparatus is an extremely broad term, which could encompass almost any engine part, since even if it was included with the original equipment, if it is broken or worn out and subsequently replaced, it would also be considered an aftermarket apparatus.

Applicant argues that the fuel heating coil 4 of Saito is not an aftermarket apparatus because the heating coil described in the Saito reference would not be an Original Equipment Manufacturer (OEM) part because of the complexity of the system used to operate and control the fuel heating coil. This argument is flawed because if, as Applicant asserts, the apparatus 4 is not an OEM part, then it is, by definition, an aftermarket device.

Perhaps Applicant did not intend to say this; perhaps he intended to say that the apparatus 4 is an OEM part. Even if that were the case, when the apparatus 4 became worn out or broken, and was then subsequently replaced, then the apparatus 4 would be an aftermarket apparatus. Applicant provides a detailed analysis, attempting to show that the apparatus 4 is not an aftermarket apparatus. The examiner is not convinced by the Applicant's analysis, but since it is premised upon a narrow definition of the term aftermarket apparatus as being only that which can be retrofitted on an existing product and assumes that this does not include replacement parts, then the premise is faulty, which makes the analysis irrelevant.

Applicant further argues that the switch described in the Saito reference does not switch the fuel injector on and off. This is correct. The switch described in the Saito reference is employed to switch the current on and off, in order to activate and deactivate the fuel heater. However, the relevance of this argument is unclear.

Applicant argues that Saito is not combinable with Parker because Parker employs permanent magnets and that the magnetic field of the permanent magnets cannot be switched on and off by the switch disclosed in Saito. However, the examiner has taken the position that the use of electromagnets in lieu of permanent magnets is an obvious modification of Parker, since the two are art recognized alternatives. Applicant further argues that Parker does not suggest switching the magnetic field on and off. However, since Parker was not relied upon to show this feature, the argument is moot. Applicant's arguments regarding the use of an AC frequency field around a magnetized object is similarly moot.

Applicant cited the rejection as stating that the use of a switch in the Parker device would provide "flexibility", but that it is not indicated in the rejection what would be made fore flexible, and that there is no motivation to combine the teaching of Saito et al with the Parker reference. The flexibility which the examiner cites is the flexibility of operation of the aftermarket device, or in other words, the ability to turn the device on and off. This is such an ordinary, common sense sort of flexibility that a secondary reference is almost not needed. It would be advantageous to have the ability to turn the device off when it is not needed, such as during engine idle, in order to avoid deploying electrical energy when it is not needed.

With respect to claim 6, Applicant argues that if the examiner considers the Saito heating coil to be the aftermarket apparatus, then the combination of teachings does not result in a device with a magnet, as claimed. As this issue has already been cleared up, and the examiner has clarified that the aftermarket device in question is that of the primary reference, which is Parker, this argument is moot.

With respect to claim 15, the broadest possible interpretation of a trailer is this definition given on the web: a rectangular shaped box with permanent wheels attached for the transport of goods on rail, highway or a combination thereof. A vehicle reads on this definition of a trailer, and this is the interpretation on which the examiner has relied to reject claim 15.

With respect to claim 21, Applicant states that the examiner has failed to provide evidence of a processor for controlling the switch mechanism. The examiner has found that it would have been obvious to one having ordinary skill in the art to

provide a programmed processor for controlling said switch mechanism for switching said aftermarket apparatus into and out of operation, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. The ability to choose either a manual switch or one controlled by a programmed processor would thus be within the purview of one of ordinary skill in the art.

With respect to Applicant's argument regarding claim 3, it would have been obvious to provide an additional visual display, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to Applicant's argument regarding claim 4, it would have been obvious to one having ordinary skill in the art to provide a fuel flow gauge as part of the display, in order to inform the vehicle operator as to the level of fuel contained in the fuel tank, as this is conventional in most vehicles.

With respect to Applicant's argument regarding claim 25, the Yukihiro reference discloses the subject matter of this claim.

With respect to Applicant's argument regarding claim 26, as noted above, the aftermarket apparatus is not the fuel heating coil of secondary reference Saito, but is rather the aftermarket apparatus of the Parker reference, which is the primary reference. The argument regarding the switch mechanism has already been addressed.

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With respect to Applicant's argument regarding claim 27, it is noted that the argument regarding the switch mechanism has already been addressed.

It is obvious from Applicant's response that he is unhappy with the quality of the examination his application has received. Perhaps Applicant is unfamiliar with the policies of the Patent Office, but in fact the examiner, in this case, has 12 hours to read, research, and write up the entire application from the start to the completion of the application, whether it results in an issue or an abandonment. The level of detail which Applicant appears to believe he is entitled to is not really possible unless the examiner provides additional time at his or her own expense, as has occurred in the examination of this application.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 571-272-4848. The examiner can normally be reached on Monday-Wednesday and Friday, 10am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Marguerite McMahon
Primary Examiner
Art Unit 3747